



Informal Hearing Determination

Company: Virginia Fuel Corporation **Permit No.:** 1602072
Subject: Notice of Violation STJ0009135
Conference: September 12, 2014 @ 8:30 AM **Location:** BSG Office
Participants: Leslie Vincent, PE

On September 12, 2014, an informal hearing was held at the Big Stone Gap office of the Department of Mines Minerals and Energy (Room 116), in reference to the fact of violation for Notice of Violation STJ0009135. Representing Virginia Fuel Corporation was Mr. Leslie Vincent, PE. The hearings officer was Harve Mooney. Representing the Southern Appalachian Mountain Stewards for a portion of the hearing was Mr. Matt Hepler. There were no other attendees from the general public at this hearing. Mr. Vincent was afforded the opportunity to provide comments and/or information during the informal hearing.

Summary of Informal Hearing

Due to the volume of violations related to the same performance standard for the same period of time, a number of the Notices of Violation of the same standard were addressed within this same hearing. Notice of Violation STJ0009135 was issued to the operator on June 30, 2014, for failure to submit to the Division of Mined Land Reclamation (DMLR) the 1st Qtr 2014 Surface water and in Stream water monitoring reports by April 30, 2014 as required. The violation was a non remedial violation. Mr. Les Vincent began by noting that several of the violations issued (including NOV STJ0009135) did not specify “what you did or did not do”. Mr. Vincent stated that the violation is missing water monitoring reports, and all violations should list the samples that are missing, and not just a blank statement that water monitoring was not submitted.

Mr. Vincent also noted that he believes that the missing water samples are “no flows”. He noted that the Justice Companies had phased in in-house sampling from Environmental Monitoring Incorporated, in the fourth quarter of 2013. When the samplers encountered an outfall with no discharge these were referred to company personnel, and EMI did not include them in the water submittal, as it was the responsibility of company personnel to enter these in the E-forms System. The company person had failed to submit the data, and that resulted in the missing sample points.

Mr. Vincent stated that by not specifying what specific samples were missing, it was impossible to assess an accurate civil penalty for the violations. He stated that the civil penalty should reflect the number of samples not collected as this would have a direct bearing on how serious the violation was. He noted that it was impossible to do the assessment since the correct number of missing samples could not be determined.

Informal Hearing Recommendation

Notice of Violation STJ0009135 (violation 1 of 1) was issued to the operator because the operator failed to submit to DMLR the 1st Qtr 2014 surface water and in Stream water monitoring reports by April 30, 2014. The standard for this violation is addressed within the Virginia Coal Surface Mining Reclamation Regulations, which addresses water monitoring and the submission of the analysis. Specifically, **Section 4VAC-25-130-816 .41 of the Virginia Coal Surface Mining Reclamation Regulations** governs the submittal of water monitoring to the DMLR. Specifically, subsections “e” of this section note,

(e) Surface-water monitoring.

(1) Surface water monitoring shall be conducted according to the surface-water monitoring plan approved under 4VAC25-130-780.21(j). The division may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4VAC25-130-774.13, the division may modify the monitoring requirements in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-780.21(j).

The company did not offer sufficient evidence that the water sampling was timely submitted to the DMLR to support its position. If indeed there were “no flows” as the representative suggests, these were additional reports that should have been submitted but were not. A review of the E-Forms System (which accepts electronic copies of the water monitoring reports) shows the corrected data not submitted until August, 2014.

There is some merit to the company representative's argument that the specifics of what samples were missing does indeed affect the seriousness of a violation issued for water monitoring. Certainly, the number of delinquent reports would loom as a factor in the assessment of a civil penalty. However, that is a matter for an assessment conference, and it is not bearing on the fact of violation.

The role of the delinquent monitoring report is to inform reclamation field staff of the status of the water monitoring performance standard in relation to compliance with VCSMR regulations. The lack of the specific missing samples in the violation report does not counter the fact that water monitoring reports were not submitted by the deadline date of April 30, 2014. Indeed, at the time of the preparation of the delinquency report, the Division had not received any of the water quality data for the sampling points in question, and only received the data after the delinquent report was prepared.

Based on the findings of this hearing, it is this hearings officer opinion that this violation was properly issued, and it is recommended that the violation be affirmed.

Informal Hearings Officer: Harve A Mooney

Date: 09/19/14